

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE NM
JUL 21 1999

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN VINCENT MACKOVICH,

Defendant.

ROBERT M. MARCH
CLERK.

No. CIV-99-0764 LH/WWD
CR-98-343 LH

MEMORANDUM OPINION AND ORDER

This matter is before the Court sua sponte to consider Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 filed July 7, 1999. Rule 4(b) Governing Section 2255 Proceedings. The file indicates that judgment was entered on Defendant's conviction May 25, 1999, and Defendant has filed a number of notices of appeal. No order terminating the appeal appears of record. "Absent extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending." *United States v. Cook*, 997 F.2d 1312, 1319 (10th Cir. 1993). No such extraordinary circumstances appear in the motion, and Defendant is not entitled to relief. Rule 4(b). The motion will be dismissed.

IT IS THEREFORE ORDERED that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 filed July 7, 1999, is DENIED without prejudice; this civil proceeding is DISMISSED; and the Clerk is directed to send copies of this order and documents #1, 2, and 3 (CIV) to Defendant's appellate counsel.



UNITED STATES DISTRICT JUDGE

